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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00248 JMS
	)	
Plaintiff,	)	UNITED STATES' RESPONSE AND
	)	OPPOSITION TO DEFENDANT
v.	)	SIGOUIN'S MOTION FOR A
	)	PRETRIAL HEARING ON THE
ROBERT ALEXANDER SIGOUIN, (2)	)	ADMISSIBILITY OF CO-
	)	CONSPIRATOR STATEMENTS;
Defendant.	)	CERTIFICATE OF SERVICE
	)	
	)	TRIAL DATE: April 25, 2006
	)	TIME: 9:00 a.m.
	)	JUDGE: Hon. J. Michael
	)	Seabright

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**UNITED STATES' RESPONSE AND OPPOSITION TO  
DEFENDANT SIGOUIN'S MOTION FOR A PRETRIAL HEARING  
ON THE ADMISSIBILITY OF CO-CONSPIRATOR STATEMENTS**

COMES NOW the United States of America, by and through  
Edward H. Kubo, Jr., United States Attorney, and Mark A.  
Inciong, Assistant United States Attorney, and hereby files its  
response in opposition to Defendant Sigouin's motion for a

pretrial hearing on the admissibility of co-conspirator statements. Said response is based upon the files and records of this case, together with the attached memorandum of points and authorities.

I

**STATEMENT OF THE CASE**

Defendants ROBERT ALEXANDER SIGOUIN and KEVIN PATRICK CASH are presently charged in a Fourth Superseding Indictment with Conspiracy to Distribute 100 grams or more of Heroin, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(B), Attempted Possession of Heroin, with Intent to Distribute, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(B), Unlawful User of a Controlled Substance in Possession of a Firearm and Ammunition, in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2)(CASH); Possession of Heroin, with Intent to Distribute, within 1000 feet of an elementary school, in violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(B) and 860 (CASH); Alien in Possession of Ammunition, in violation of Title 18, United States Code, Sections 922(g)(5)(A) and 924(a)(2)(SIGOUIN); and Forfeiture pursuant to Title 21, United States Code, Section 853 (SIGOUIN).

II

STATEMENT OF FACTS

The United States adopts the statement of facts offered in its previously filed pretrial motions in this matter.

III

POINTS AND AUTHORITIES

A. DEFENDANT HAS NO RIGHT TO A PRETRIAL HEARING REGARDING THE ADMISSIBILITY OF SPECIFIC CO-CONSPIRATOR STATEMENTS.

Defendant offers no authority, and the United States believes none exists within the Ninth Circuit, which requires a pretrial hearing to determine the admissibility of co-conspirator statements a trial. In this case, none is necessary as the United States is well aware of its obligation not to introduce hearsay testimony and has no intention of attempting to admit such evidence.

The United States will, however, seek to introduce non-hearsay evidence at trial pursuant to Federal Rule of Evidence 801(d)(2)(E). As required, each of those statements will be shown to have been made by a co-conspirator during the course of and in furtherance of the conspiracy.

If, during trial, the Defendant believes sufficient foundation has not been made to establish the co-conspirator statement as non-hearsay, he may object at that time.

IV

CONCLUSION

Based on all of the above, the Defendant's motion should be denied.

DATED: April 17, 2006, at Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney

By /s/ Mark A. Inciong  
MARK A. INCIONG  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served by First Class Mail:

ROBERT ALEXANDER SIGOUIN  
Federal Detention Center  
P. O. Box 30080  
Honolulu, HI 96820  
Defendant PRO SE

April 17, 2006

Served Electronically through CM/ECF:

GLENN D. CHOY, ESQ.  
choyhawaii@hawaiiantel.net

April 17, 2006

DATED: Honolulu, Hawaii, April 17, 2006.

/s/ M. Derby-Taufa'asau